

**40 CFR Part 300**

[FRL-5192-5]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Intent To Delete Pesses Chemical Co., TX****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of intent to delete the Pesses Chemical Company Site from the National Priorities List: Request for comments.

**SUMMARY:** The United States Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Pesses Chemical Company Site (Site) from the National Priorities List (NPL), 40 CFR part 300, Appendix B, and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC), have determined that all appropriate actions under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State have determined that response activities conducted at the Site to date have been protective of public health, welfare, and the environment.

**DATES:** The EPA will accept comments concerning its proposal to delete until May 17, 1995.

**ADDRESSES:** Comments may be mailed to: Ms. Olivia Rodriguez-Balandran, Community Relations Coordinator, U.S. EPA, Region 6 (6H-MC), 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-6584 or, 1-800-533-3508.

Comprehensive information on the Site is available for review at EPA's Region 6 office in Dallas, Texas. The Administrative Record for this Site is maintained in EPA's Region 6 Library and is available for viewing from 7:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The address for the Region 6 Library office is: U.S. EPA, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-6424 or 665-6427.

The Administrative Record also is available for viewing at the Pesses Chemical Company Site information repositories located at:

Fort Worth Public Library, Seminary South Branch, 501 East Bolt Street,

Fort Worth, Texas 76110, (817) 926-0215.

Texas Natural Resource Conservation Commission, 12118 North IH35, Building D, Room 190, Austin, Texas 78753, (512) 239-2920.

Certain background information, including EPA's proposal to delete the Site from the NPL and the basis for EPA's proposal, is available for viewing at the following additional Pesses Chemical Company Site information repositories. A complete copy of the Administrative Record is not maintained at these locations:

City Secretary's Office, Fort Worth City Hall, 1000 Throckmorton, Fort Worth, Texas 76102.

Fort Worth Central Library, 300 Taylor Street, Fort Worth, Texas 76102.

Texas Christian University, Mary Couts Burnett Library, 2800 University Drive, Fort Worth, Texas 76109.

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl G. Hendrick, U.S. EPA, Region 6 (6H-SC), 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 665-8519.

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**I. Introduction**

The United States Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Pesses Chemical Company Site, Fort Worth, Tarrant County, Texas, (Site) from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to 40 CFR 300.425(e) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning its intent to delete for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the Site and explains how the Site meets the deletion criteria.

**II. NPL Deletion Criteria**

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i) Responsible parties or other persons have implemented all appropriate response actions required; or,

Section 300.425(e)(1)(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL.

In addition, deletion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

**III. Deletion Procedures**

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

Upon determination that at least one of the criteria described in § 300.425(e) has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of the Site:

(1) EPA Region 6 has recommended deletion and has prepared the relevant documents.

(2) The State of Texas concurred by letter dated June 2, 1994, with the deletion decision.

(3) Concurrent with this National Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state, and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts with the publication of this notice in the **Federal Register**.

(4) The Region has made all relevant documents available in the Regional Office and local Site and State of Texas information repositories.

These procedures have been completed for the Site. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day public comment period and the availability of the Notice of Intent to Delete. The public is asked to comment on EPA's proposal to delete the Site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repositories and are included in the deletion docket.

Upon completion of the 30-day public comment period, the EPA Regional Office will evaluate these comments before the final decision to delete. The Region will prepare a Responsiveness Summary, if necessary, which will address concerns presented in the comments received during the public comment period. Any Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are welcome to contact the EPA Regional Office to obtain a copy of the Responsiveness Summary, if any. If EPA still determines that deletion from the NPL is appropriate after receiving public comments, a final notice of deletion will be published in the **Federal Register**. The deletion of the Site does not actually occur until the Notice of Deletion is published in the **Federal Register**.

#### IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for deleting the Pesses Chemical Company Site from the NPL.

The Site is located at 2301 South Main Street, Fort Worth, Tarrant County, Texas. The Site is in a light industrial and commercial area. The 4.2 acre Site was used to reclaim cadmium and nickel from dry-cell batteries and metal sludge. The Pesses Company, under the name Pesses S'West, conducted reclaiming activities from approximately June 1979 until January 1981.

In April 1983, EPA removed 3,400 cubic yards of contaminated soil, metal sludge, drummed material, and debris from the Site and shipped the waste to Chemical Waste Management, in Port Arthur, Texas. The Site was proposed for inclusion on the NPL on October 15, 1984, (49 FR 40320) with a score of 28.86, due mainly to the potential migration of heavy metals via airborne dust and surface water runoff from the Site. The Site was finalized on the NPL on June 10, 1986, (51 FR 21054). EPA assigned the Texas Water Commission, predecessor to the Texas Natural Resource Conservation Commission

(TNRCC), as the lead agency for remedial activities for the Site. The Remedial Investigation/Feasibility Study (RI/FS) was performed between December 1987 and October 1988. Although the imminent health threat had been alleviated by the EPA Emergency Response Team removal action conducted in April 1983, the RI determined that residual contamination of cadmium and nickel in the soils (to a depth of two to three feet over most of the Site) and in the metal warehouse and process equipment posed health and environmental threats requiring remediation. Concentrations of cadmium averaged above 300 milligrams per kilogram (mg/kg) of soil. Dust in some process equipment contained as much as 59 percent cadmium and 26 percent nickel. No organic contaminants were found at concentrations which posed health or environmental impacts. No asbestos was detected. Because the ground water is 380 feet below low permeability clay, shale and shaley limestone, and the maximum depth of Site contaminants was less than 13 feet, EPA has determined that the ground water was not and will not, in the future, be affected by the Site.

The EPA Regional Administrator signed the Record of Decision (ROD) for the Site on December 22, 1988, selecting in-situ stabilization of the contaminated soils and Site contaminants, plus capping as the remedy. EPA selected this remedy because it eliminates the principal threat posed by the Site conditions by eliminating the possibility of human exposure with the metals of concern and preventing the spread of contaminants.

During the preparation of the bid specifications for the remedial action, EPA recognized that the south field was not wide enough in some areas to support a four foot thick protective clay cap over the stabilized waste material. Therefore, on June 8, 1990, EPA issued an Explanation of Non-Significant Change (ENSC) explaining EPA's decision to substitute the four foot thick clay cap with an 80 mil thick high density polyethylene (HDPE) liner and an eight inch thick, double reinforced concrete cap. This type of concrete cap, to be placed on the southern portion of the Site, is similar to the cap specified in the ROD for the northern portion of the Site and would not increase the cost of the remedial action.

After a competitive bid process, TNRCC awarded the remediation contract to the lowest responsive, responsible bidder. The former Site operations area consisted of a metal warehouse with various pieces of

equipment, a baghouse, two underground sumps, and a south storage yard with a concrete pad. The remedial action contractor (Contractor) removed the refractory from the furnaces and the two sumps from the ground. The Contractor eventually consolidated this material with the dust and bags from the baghouse and the contaminated soil. The Contractor decontaminated the metal warehouse building, drums and metal process equipment by high pressure water washing. TNRCC's oversight Engineer (Engineer) collected and analyzed wipe samples for cadmium and nickel.

The Contractor excavated 1,806 cubic yards of offsite contaminated soil and 10,553 cubic yards of onsite contaminated soil. The excavated material was placed in the south field and stabilized in-situ with a mixture of 1 part cement kiln dust to 9 parts Site-contaminated soil by weight. Equilibrium Partitioning Toxicity Tests verified that the Site contaminants did not leach out of the stabilized soil.

An 80 mil thick textured HDPE liner was then installed over the stabilized soil by the HDPE manufacturer's licensed installer and all line seams were tested in accordance with the manufacturer's specifications. An eight inch thick, double reinforced steel concrete cap was placed over the HDPE top liner and sealed according to the sealer manufacturer's specifications. A fence was installed around the Site. Contaminated soil excavated from the northern portion of the Site was replaced with clean soil and covered with an eight inch thick, double reinforced steel concrete cap. Contaminated soil excavated from offsite was replaced with clean soil and sodded.

Other than the material required for laboratory analysis, all contaminated material remained on the Site and is contained within the fenced and capped area. To reduce the quantity of buried material and to recycle steel, decontaminated steel was removed from the Site. Contaminated wash water was used in the contaminated soil compaction and stabilization activities. Air monitoring analyses during construction found no contaminant levels of concern.

EPA, TNRCC, and TNRCC's Engineer conducted the Construction Final Inspection on September 15, 1992. The team determined that the remedial action had been completed successfully. The Engineer's Final Remedial Action Report, detailing the remedial activities and documenting the successful completion of all construction activities, was submitted in November 1992. On

September 30, 1993, the Acting Regional Administrator signed the EPA Final Close Out Report. EPA released a Fact Sheet describing this report and the status of the Site in January 1994.

The Cooperative Agreement between EPA and TNRCC budgeted \$2,552,898 for all of TNRCC's remedial design and remedial action activities, including the Construction Contract, oversight and the State ten percent cost share and the first year of Operation and Maintenance. The final actual cost expenditure for these activities totaled \$1,383,320.

The EPA/TNRCC community relations activities included: a public meeting in 1985 to explain the Superfund process and to learn of citizen concerns; a questionnaire to area officials and residents requesting information on their concerns or issues related to the Site; an EPA briefing to Fort Worth health officials regarding the proposed remedy; and a meeting in November 1988 to present the alternatives developed in the FS and EPA's preferred alternative for remedial action. In June 1990, TNRCC presented the plans for the Remedial Action (RA). In April 1992, EPA and TNRCC met with railroad personnel working adjacent to the Site to discuss their concerns regarding possible exposures to Site contaminants during the Pesses metal reclamation operations and during the remedial action. EPA and TNRCC explained that they could not determine the worker exposure during the time that Pesses S'West conducted metal reclamation operations, gave the workers information regarding cadmium, nickel and lead poisoning, and suggested that the workers contact their employer-provided physician or their own personal physician. EPA and TNRCC also explained that air monitoring at the perimeter of the Site would ensure that no detectable quantities of contaminants left the Site during remediation activities.

All EPA completion requirements for the Site have been met. Specifically, confirmatory sampling verified that soil and dust contaminated with greater than 15 parts per million (ppm) cadmium or 100 ppm nickel was excavated, stabilized with cement kiln dust, capped and fenced in accordance with the ROD and the ENSC. Confirmatory soil sampling and the backfilling of the excavated areas with clean soil provides further assurance that the area no longer poses any threats to human health or to the environment and no further Superfund response is appropriate.

The Site Review and Update, prepared by the Texas Department of Health under a Cooperative Agreement with the Agency for Toxic Substances

and Disease Registry (ATSDR), issued on September 1, 1993, states that all of ATSDR's previous recommendations have been addressed or can be dismissed. The potential threat to human exposure has been eliminated.

TNRCC's Engineer conducted quarterly Site inspections for TNRCC during the one year Operational and Functional (O&F) period from September 1992 to September 1993 and reported the results to TNRCC. The Site concrete cap and fencing were inspected for integrity. EPA, TNRCC and TNRCC's Engineer conducted the final O&F inspection on September 10, 1993. There were no cracks in the concrete but there were minor surface cracks in the asphalt sealant covering the joint fillers and one hole cut in the fence. Repairs were made. EPA determined that the remedial action was successful in protecting the public health and welfare.

The State assumed all responsibility for Operation & Maintenance (O&M) at the Site as of October 1, 1993. Therefore, long-term O&M of the Site will be under the direction of the State of Texas, as guaranteed in the Cooperative Agreement awarding remedial action funds. O&M consists of inspecting the concrete cap and security fence for integrity and making all needed repairs.

Hazardous substances, above health-based levels, remain in the stabilized and capped soil located on the southern portion of the Site. These materials prevent unlimited use and unrestricted access to this portion of the Site. For this reason, EPA will conduct statutory five-year reviews, pursuant to Office of Solid Waste and Emergency Response Directive 9355.7-02, "Structure and Components of Five-Year Reviews". EPA will conduct the first review before September 1996. These reviews will allow EPA and the State to determine whether the protectiveness of the remedy for the Site will be maintained over time.

Based on the successful stabilization of the hazardous materials onsite, the results of O&M activities to date, and ATSDR's favorable review, the remedy is protective and no additional response action is necessary. State funded O&M and EPA funded five-year reviews will continue in the future, but EPA may proceed with the Site deletion since applicable deletion criteria have been satisfied.

EPA, with concurrence of the State of Texas, has determined that all appropriate responses under CERCLA at the Pesses Chemical Company Site have been completed, and that no further response action, other than O&M and Five-Year reviews, is necessary.

Therefore, EPA proposes to delete the Site from the NPL.

Dated: April 7, 1995.

**A. Stanley Meiburg,**

*Acting Regional Administrator, US EPA Region 6.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 95-38, RM-8587]

#### Television Broadcasting Services; Kailua, HI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Paul Alfred Tennyson, proposing the allotment of Television Channel 50 to Kailua, Hawaii, as that community's first local television service. The allotment can be made consistent with the minimum distance separation requirements of Section 73.610 of the Commission's Rules. The coordinates for the proposed allotment of Channel 50 to Kailua are North Latitude 21-24-00 and West Longitude 157-44-30. This proposal is not affected by the freeze on television allotments or applications.

**DATES:** Comments must be filed on or before June 1, 1995, and reply comments on or before June 16, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Paul Alfred Tennyson, 305 Hahani Street, #118, Kailua, Hawaii 96734 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-38, adopted March 28, 1995, and released April 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW, Room 246, or